IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.118 OF 2000
WITH
CIVIL REVISION APPLICATION NO.119 OF 2000
AND
CIVIL REVISION APPLICATION NO.300 OF 2000

CIVIL REVISION APPLICATION NO.118 OF 2000

M/s C.M.A. Constructions,
registered partnership with
office at 16-A,
Kurtarkar Commercial Arcade,
IInd floor, Kaziwada,
Ponda, Goa. ... Applicants.

versus

State of Goa,
represednted byh Executive
Engineer, Works Division VI,
Irrigation Department,
Tivim Industrial Estate,
Bardez, Goa. ... Respondent.

Mr. C. Mascarenhas, Advocate for the Applicants.

Mrs. Winnie Coutinho, Government Advocate for the Respondent.

CIVIL REVISION APPLICATION NO.119 OF 2000

M/s. Welma Constructions
H.No.377, Ward No.15,
Caranzalem, Tiswadi,
Goa. ... Applicant.

versus

State of Goa,
represented by Executive
Engineer, Works Division VII,
Irrigation Department,
Colvale, Bardez, Goa. ... Respondent.

Mr. C. Mascarenhas, Advocate for the Applicant.

Mrs.Winnie Coutinho, Government Advocate for the Respondent.

CIVIL REVISION APPLICATION NO.300 OF 2000

Dattakumar S. Dessai,
major of age,
Archana Mansion,
Agalli, Fatorda,
Margao, Goa. ... Applicant.

versus

State of Goa,
represented by Executive
Engineer, Works Division XVI(BC),
P.W.D., Ponda, Goa. ... Respondent.

Mr. C. Mascarenhas, Advocate for the Applicant.

Mrs. Winnie Coutinho, Government Advocate for the Respondent.

CORAM: P. V. HARDAS, J.

DATED: 16TH JANUARY, 2003.

ORAL JUDGMENT

These three revisions are being finally decided by this common Order as they involve common questions of law.

2. The Applicants have filed these revisions, assailing the Order passed by the learned IInd Additional District Judge at Panaji, in Civil Miscellaneous Application No.140 of 1998, Civil

Miscellaneous Application No.157 of 1998 and Civil Miscellaneous Application No.59 of 1999, dated 1st February, 2000.

3. The brief facts relating to the filing of the present revisions are stated hereunder:-

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In this case, the Award was passed by the Sole Arbitrator on 25th November, 1996 against which the present Respondent filed objections in the Court of the Civil Judge, Senior Division of Bardez, Mapusa, on 25th June, 1997. Ultimately, the Civil Judge, Senior Division at Mapusa, closed the proceedings by Order dated 18th June, 1998. In the application for condonation of delay in filing the objections before the IInd Additional District Judge at Panaji, it was stated that the present Respondent had applied for copy of the Order dated 18th June, 1998 on 1st July, 1998 and the same was received on 10th July, '1998. The Counsel appearing on behalf of the Respondent before the Civil Judge, Senior Division at Mapusa, expressed his inability on 14th August, 1998 to appear in the Court of the District Judge at Panaji for filing of the objections on account of personal difficulty and hence, the filing of the objections was delayed. It was also

stated that thereafter the Law Department was approached for the purpose of appointing another Counsel to file the objections against the Award before the District Judge at Panaji. The Law Department ultimately appointed a Counsel on 8th September, 1998 and the Counsel received the letter of appointment on 15th September, 1998. The new Counsel who had been appointed by his letter dated 25th September, 1998 referred the matter to the Law Department for seeking some clarifications on the point of jurisdiction of the District Judge to entertain the objections to the Award. The Law Department verified the position and by letter dated 16th October, 1998, which was received by the Counsel on 22nd October, 1998 clarified the position and, therefore, the objections came to be filed in the Court of the District Judge at Panaji. Thus, it would be seen that there is no explanation whatsoever for the delay from 10th July, 1998 to 14th August, 1998. The averments in the application for condonation of delay do not properly explain the delay thereafter till the filing of the objections.

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In the present case, the Award came to be passed on 25th July, 1996. The objections to the Award came to be filed before the Civil Judge, Senior

Division at Mapusa. The objections were registered as Civil Miscellaneous Application No.280/96/A. The objections ultimately came to be disposed of by the Order dated 4th August, 1998. In the application for condonation of delay in para 4, it was stated that the present Respondent then sought opinion from the Law Department and from the Government Counsel and it was decided to file objections against the Award dated 25th July, 1996 in the Court of the District Judge at Panaji. The application for condonation of delay accompanied by the affidavit and the objections were filed before the District Judge at Panaji on 18th November, 1998.

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In this case, the Award of the Arbitrator is dated 8th June, 1997. The present Respondent filed the objections before the Civil Judge, Senior Division at Ponda and the learned Civil Judge, Senior Division at Ponda by his Order dated 6th March, 1999 closed the proceedings for want of jurisdiction. The application for condonation of delay accompanied by the affidavit came to be filed before the District Judge at Panaji on 29th March, 1999.

4. The learned IInd Additional District Judge at

Panaji, by the Order impugned in these revisions came to the conclusion that the provisions of the Limitation Act, 1963 would apply for the filing of the Award under the Arbitration and Conciliation Act, 1996 and condone the delay. The reason given in the application for condonation of delay was that after the receipt of the certified copy of the Order of the learned Civil Judge, Senior Division, Mapusa, the learned Counsel appearing on behalf of the present Respondent had some difficulty in filing the objections and hence, the filing of the objections was delayed. The Law Department was subsequently approached for the appointment of a new lawyer and considerable time was utilised to seek clarification on judicial aspect and ultimately an application has been filed to set aside the Award along with the application for condonation of delay.

5. Under Section 34(3) of the Arbitration and Conciliation Act, 1996, objections to the Award have to be filed within three months with a proviso enabling the Court if satisfied that the Applicant was prevented by sufficient cause from making the application within a further period of 30 days. Sub-Section (3) of Section 34 clearly mandates "but not thereafter".

6. Undisputedly, the filing of the objection, before the Competent Forum, was much beyond the

prescribed period of limitation under the Arbitration and Conciliation Act, 1996.

7. Mr. C. Mascarenhas, the learned Counsel appearing for the Applicants has invited my attention to a Judgment of the Apex Court in the matter of **Union of India** v. **Popular Construction Co.** reported in 2001(3) Arb.LR 345(SC). The Apex Court has held that Section 5 of the Limitation Act, 1963 would not apply.

8. My attention is also invited to a Judgment of the learned Single Judge of this Court in the matter of **Pushpa P. Mulchandani and others** v. **Admiral Radhakrishin Tahilani(Retd.) and others** reported in 2001(2) Arb.LR 284(Bombay). The learned Single Judge of this Court, Srikrishna, J, as His Lordship then was, has held that Sections 4 to 24 of the Limitation Act, 1963 would not apply.

9. Thus, on close reading of Section 34(3) of the Arbitration and Conciliation Act, 1996 and the aforesaid Judgments referred to above, it is clear that the provisions of the Limitation Act, 1963 cannot be invoked to seek condonation of delay in filing the objections to the Award under the Arbitration and Conciliation Act, 1996. The Order of the IInd

Additional District Judge at Panaji condoning the delay on the face of it, is unsustainable.

10. Even otherwise, it would be seen that the reasons given in the application for condonation of delay are extremely cryptic and vague. No dates are stated as to when the papers were received from the concerned Advocate and when they were forwarded to the Law Department and when a new Advocate came to be appointed. On merits also, the Order of the learned IInd Additional District Judge at Panaji condoning the delay is unsustainable.

11. Mrs. Winnie Coutinho, the learned Government Advocate appearing for the Respondent has vainly tried to deny the Order of the learned IInd Additional District Judge at Panaji and has urged before me that the Order of the learned IInd Additional District Judge at Panaji needs no interference as the learned IInd Additional District Judge at Panaji in its discretion has condoned the delay. This argument is untenable as the provisions of the Limitation Act, 1963 do not apply and the reasons stated in the application itself are not sufficient to warrant condonation of delay. Be that as it may, the Order is unsustainable and deserves to be quashed and set aside.

12. Civil Revision Application Nos.118, 119 and 300 of 2000 are allowed. The Order impugned by the learned IInd Additional District Judge at Panaji is hereby quashed and set aside with no order as to costs.

P. V. HARDAS, J.

RD.